

§ 40.252

for in the records and reports required under §§ 40.183 and 40.202 the same as products within the factory.

(72 Stat. 1422, 1423, as amended; 26 U.S.C. 5722, 5741)

[T.D. 6871, 31 FR 37, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975; T.D. ATF-232, 51 FR 28082, Aug. 5, 1986; T.D. ATF-243, 51 FR 43194, Dec. 1, 1986]

§ 40.252 Reduction of tobacco products to materials.

A manufacturer may reduce tobacco products to materials without supervision. If the tobacco products have been entered in the factory record as manufactured or received, an entry shall be made in such record of the quantity of pipe tobacco or roll-your-own tobacco and the kind and quantity of cigars, cigarettes, and smokeless tobacco reduced to materials and of the quantity of tobacco resulting from the reduction. Where the manufacturer intends to file claims for credit allowance, or refund of tax on such tobacco products, he shall comply with the provisions of §§ 40.311 and 40.313.

[T.D. ATF-232, 51 FR 28082, Aug. 5, 1986; T.D. ATF-243, 51 FR 43194, Dec. 1, 1986, as amended by T.D. ATF-289, 54 FR 48840, Nov. 27, 1989; T.D. ATF-424, 64 FR 71931, Dec. 22, 1999]

§ 40.253 Destruction.

When a manufacturer of tobacco products desires to destroy tobacco products which have been entered in the factory record as manufactured or received, without salvaging the tobacco, he shall notify the appropriate TTB officer by letter, in duplicate, of the kind and quantity of tobacco products to be destroyed, the intended method of destruction, and the date on which he desires to destroy such products. The appropriate TTB officer may assign an appropriate TTB officer to supervise destruction of the tobacco products or he may authorize the manufacturer to destroy such products without supervision by so stating on a copy of the manufacturer's notice returned to the manufacturer. When so authorized by the appropriate TTB officer, the manufacturer shall destroy the tobacco products by burning completely or by rendering them unfit for consumption. Upon completion of the destruction, the manufacturer shall

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make an entry of such destruction in his factory record, and where destruction without supervision is authorized, shall record the date and method of destruction on the notice returned to him by the appropriate TTB officer, which notice the manufacturer shall retain. Where the manufacturer intends to file claim for credit, allowance, or refund of tax on such products he shall comply with the provisions of §§ 40.311 and 40.313.

(72 Stat. 1423, as amended; 26 U.S.C. 5741)

[T.D. 6871, 31 FR 37, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-232, 51 FR 28082, Aug. 5, 1986; T.D. ATF-243, 51 FR 43194, Dec. 1, 1986]

§ 40.254 Receipt into factory.

A manufacturer of tobacco products may receive in bond into his factory tobacco products and may also receive into his factory tobacco products on which the tax has been determined (including products on which the tax has been paid). Cigars and cigarettes on which the tax has been determined which are so received shall be segregated and identified as products on which the tax has been determined. If tax determined products received into the factory are so handled that they cannot be identified both physically and in the records as tax determined products they shall be accounted for as returned to bond and upon subsequent removal shall be tax determined. Where returned tax determined tobacco products are to be repackaged without being returned to bond the manufacturer shall make application for authorization to do so to the appropriate TTB officer in accordance with § 40.217. Where the manufacturer intends to file claim for credit, allowance, or refund of tax on tax determined products he shall comply with the provisions of §§ 40.311 and 40.313.

[T.D. 6871, 31 FR 37, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-232, 51 FR 28082, Aug. 5, 1986; T.D. ATF-243, 52 FR 43194, Dec. 1, 1986]

§ 40.255 Shortages and overages in inventory.

Whenever a manufacturer of tobacco products makes a physical inventory of

packaged tobacco products in bond, either as part of normal operations or when required by an appropriate TTB officer, and such inventory discloses a shortage or overage in such products by kind as recorded and reported (*i.e.*, small cigars, large cigars, chewing tobacco, snuff, pipe tobacco, or roll-your-own tobacco), the manufacturer shall enter such shortage or overage in the records required by §40.183. Shortages or overages in inventories made at different times may not be used to offset each other, but shall be recorded and reported separately. Unless the manufacturer establishes that a shortage was not caused by a removal subject to the tax the manufacturer shall determine the tax on any shortage, make an adjustment in Schedule A of his next semimonthly tax return and pay the tax thereon. If, after paying the tax on a shortage, the manufacturer satisfactorily establishes that the shortage was not caused by a removal subject to tax, then such payment would be an overpayment of tax which the manufacturer may recover as provided in §40.286. Where the manufacturer can establish prior to paying the tax on a shortage, that the shortage was not the result of a removal subject to tax he shall submit an explanation of such shortage with his report for the month in which the shortage was disclosed and, if appropriate, he may file claim for remission of tax liability as provided in §40.287. When an overage is disclosed which the manufacturer can explain, he shall include such explanation in his monthly report and refund of any overpayment may be recovered as provided in §40.286. Whenever a physical inventory discloses a shortage or overage of tobacco products which have not been packaged the manufacturer shall appropriately enter such shortage or overage in his records and shall, at the time required by the appropriate TTB officer, furnish an explanation in the form of a claim for remission of tax liability as provided in §40.287. The manufacturer shall pay the tax on any shortage or portion thereof for which he is unable to furnish an ex-

planation acceptable to the appropriate TTB officer.

[T.D. ATF-232, 51 FR 28082, Aug. 5, 1986; T.D. ATF-243, 51 FR 43194, Dec. 1, 1986, as amended by T.D. ATF-289, 54 FR 48840, Nov. 27, 1989; T.D. ATF-424, 64 FR 71931, Dec. 22, 1999]

Subpart I—Claims by Manufacturers

GENERAL

§ 40.281 Abatement of assessment.

A claim for abatement of the unpaid portion of the assessment of any tax on tobacco products or any liability in respect thereof, may be allowed to the extent that such assessment is excessive in amount, is assessed after expiration of the applicable period of limitation, or is erroneously or illegally assessed. Any claim under this section shall be prepared on Form 2635 (5620.8), in duplicate, and shall set forth the particulars under which the claim is filed. The original of the claim, accompanied by such evidence as is necessary to establish to the satisfaction of the appropriate TTB officer that the claim is valid, shall be filed with the appropriate TTB officer, and the duplicate of the claim shall be retained by the manufacturer.

(68A Stat. 792; 26 U.S.C. 6404)

[T.D. 6871, 31 FR 38, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-232, 51 FR 28083, Aug. 5, 1986; T.D. ATF-243, 51 FR 43194, Dec. 1, 1986; T.D. ATF-251, 52 FR 19340, May 22, 1987]

§ 40.282 Allowance of tax.

Relief from the payment of tax on tobacco products may be extended to a manufacturer by allowance of the tax where the tobacco products after removal from the factory upon determination of tax and prior to the payment of such tax, are lost (otherwise than by theft) or destroyed, by fire, casualty, or act of God, while in the possession or ownership of the manufacturer who removed such products, or are withdrawn by him from the market. Any claim for allowance under this section shall be filed on Form 2635, in duplicate, with the appropriate TTB officer, and shall show the date the tobacco products were removed from the